

(3) Is necessary due to the lack of availability of other vessels and operators that comply with the requirements of the MSA 2003.

#### § 296.12 Applicants.

*Applicant.* Owners or operators of an eligible vessel may apply to MARAD for inclusion of that vessel in the MSP Fleet pursuant to the provisions of the MSA 2003. Applications shall be addressed to the Secretary, Maritime Administration, Room 7218, Maritime Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

### Subpart C—Priority for Granting Applications

#### § 296.20 Tank vessels.

(a) First priority for the award of MSP Operating Agreements under MSA 2003 shall be granted to a tank vessel that is constructed in the United States after October 1, 2004.

(b) First priority for the award of MSP Operating Agreements under the MSA 2003 may be granted to a tank vessel that is less than ten years of age on the date it enters an MSP Operating Agreement:

(1) Provided that a binding contract for a replacement vessel to be operated under the MSP Operating Agreement and to be built in the United States has been executed and approved by the Secretary not later than nine months after the first date appropriated funds are available for construction assistance; and

(2) No payment can be made for an existing tank vessel granted priority one status after the earlier of:

(i) Four years after the first date appropriated funds are available to carry out the construction of a tanker in the United States; or

(ii) The date of delivery of the replacement tank vessel.

(c) A tank vessel under this section must be eligible to be included in the MSP under § 296.11(a);

(d) A tank vessel under this section must be owned and operated during the period of the operating agreement by one or more persons that are citizens of the United States under section 2 of

the Shipping Act of 1916 (46 App. U.S.C. 802); and

(e) The Secretary will not enter into more than five Operating Agreements for tank vessels under this priority. If the five tank vessel Operating Agreement slots are not fully subscribed, the Secretary, in consultation with the SecDef, may award the non-subscribed slots to lower priority vessels, if deemed appropriate. If the Secretary determines that no funds are, or are likely to be, allocated for any tank vessel construction in the United States, the five slots may be awarded permanently to non-tank vessels. The Secretary may temporarily award a slot reserved for a tank vessel under construction to a lower priority vessel during the construction period of that vessel if an existing tank vessel offered by the tank vessel Contractor is not eligible for priority for that slot. If no existing tank vessel is offered by the tank vessel Contractor, the Secretary may temporarily award an MSP Operating Agreement to a non-tank vessel of another Contractor until a new tank vessel's construction is completed in the United States. Such temporary agreements shall be terminated at the convenience of the Secretary under terms set forth in the temporary MSP Operating Agreement.

#### § 296.21 Participating Fleet Vessels.

(a) *Priority.* To the extent that appropriated funds are available after applying the first priority, tank vessels, in § 296.20, the second priority is applicable to Participating Fleet Vessels.

(b) *Number of Operating Agreements.* MARAD will not enter into more than 47 Operating Agreements for Participating Fleet Vessels.

(c) *Reduction of Participating Fleet Vessel Operating Agreements.* The number of Operating Agreements available to Participating Fleet Vessels shall be reduced by one for:

(1) Each Participating Fleet Vessel for which an application for enrollment in the MSP is not received by the Secretary, Maritime Administration on October 15, 2004; or

(2) Each Participating Fleet Vessel for which an application for enrollment in the MSP is received by the Secretary, Maritime Administration on